

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	
Coastal Television Broadcasting Company LLC)	
)	
Complainant)	MB Docket No. _____
)	CSR-_____
v.)	
)	
MTA Communications, LLC)	
)	
Defendant)	
)	

To: Office of the Secretary
Attn: Chief, Media Bureau

GOOD FAITH NEGOTIATION COMPLAINT

Coastal Television Broadcasting Company LLC (“Coastal”), pursuant to Section 325(b)(3)(C) of the Communications Act of 1934, as amended, and Sections 76.7 and 76.65 of the Commission’s Rules, hereby files this Complaint against MTA Communications, LLC (“MTA”). Coastal brings this complaint because MTA has breached its obligation to negotiate in good faith for the terms of retransmission of the signal of Coastal’s broadcast television station KTBV, Anchorage, Alaska. As detailed herein, MTA has unreasonably delayed retransmission consent negotiations between the parties, and has essentially failed to respond to Coastal’s proposals for extended periods of time. In doing so, MTA has clearly committed *per se* violations of the Commission’s rules requiring it to negotiate in good faith with Coastal. MTA has clearly violated its duty to negotiate in good faith under the totality of the circumstances test as well.

I. JURISDICTION

The Commission has jurisdiction to consider and resolve this Complaint pursuant to the Communications Act of 1934, as amended, and Sections 76.65 and 76.7 of the Commission's rules, 47 U.S.C. § 325(b)(3)(C)(ii), 47 C.F.R. §§ 76.65, 76.7.

II. THE COMPLAINANT

Coastal is the licensee of full service television broadcast station KTBV, licensed to Anchorage, Alaska and assigned to the Anchorage, Alaska Designated Market Area ("DMA"). Coastal is also licensee of certain analog and digital translator stations that rebroadcast the signal of KTBV, as well as television station WLOV-TV, West Point, Mississippi. KTBV carries programming from the Fox Network, as well as extensive slate of syndicated programming and locally-produced and focused programs, including local news and non-news programming.

III. THE DEFENDANT

MTA operates cable television systems delivering multiple channels of video programming to subscribers in the Anchorage DMA. MTA therefore is a multichannel video programming distributor ("MVPD") as defined in the Communications Act and the Commission's Rules. Both Coastal and MTA are "Negotiating Entities" for purposes of Section 76.65 of the Commission's Rules.

IV. STATEMENT OF FACTS

MTA has carried the signal of KTBV since January 1, 2015 pursuant to retransmission consent. MTA and Coastal were most recently parties to a retransmission consent agreement which, by its terms, expired on December 31, 2017. Anticipating the expiration of that agreement, William A. Fielder, III, CEO of Coastal and Jonathan Babbitt, Director of Product Management and Marketing of MTA ("Babbitt") met by telephone shortly before Thanksgiving to begin discussions regarding renewal. On November 28, 2017, Scott Centers, COO of Coastal ("Centers") emailed

Babbitt an initial proposal for a replacement retransmission consent agreement. Babbitt replied to Centers via e-mail on December 1, 2017 proposing a minor change to the language of the agreement, and proposing a relatively minor reduction in retransmission fees. Centers replied by e-mail to Babbitt on December 5 agreeing to the change in language and MTA's proposed 2018 fee, and proposing only a five cent per subscriber increase to MTA's 2019 fee proposal. Babbitt and Centers exchanged numerous e-mails on December 5 and 6 attempting to close that five cent difference and finalize a deal. At the end of this exchange, Centers sent an e-mail to Babbitt on December 6 attempting to agree to what he understood to be MTA's last offer. MTA did not acknowledge this acceptance. Centers and Babbitt further discussed the agreement by telephone during December but did not reach agreement.

On December 30, 2017, with the agreement about to expire, Centers e-mailed Babbitt to offer to extend that agreement until January 5 to allow the parties to finalize a new deal. Later that day, Babbitt responded, saying that MTA was unwilling to extend the previous agreement, and introduced a new fee proposal significantly lower than its own previous proposal that Coastal had attempted to accept. Centers replied, acknowledging that if MTA was unwilling to agree to an extension, that MTA would not have consent to continued retransmission after December 31, 2017. On January 1, 2018, in response to MTA's extraordinary and drastic reduction of its own previous offer, Centers e-mailed Babbitt, reciting the history of their negotiations and modifying its own past offer to request a slightly higher rate of compensation. Babbitt responded by e-mail January 2 indicating that MTA would not agree to those terms, but did not provide a counter-offer. Centers replied by e-mail on January 2 requesting a counter-offer. Centers and Babbitt exchanged additional e-mails on January 2 and 3, but MTA still refused to make a counter-offer. Instead of providing a counter-offer, MTA cut off communications.

In April 2018, still without a counter-offer from MTA, Centers reached out to Babbitt again to attempt to restart negotiations, but received no response. On May 7, Babbitt finally e-mailed Centers to provide a counter-offer, again reducing their previous offer and increasing the differences between the parties. Centers attempted to reply by e-mail during May, but was later informed that Babbitt did not receive those e-mails due to issues in MTA's e-mail system. The parties were eventually able to re-establish communications, and on June 21, Babbitt re-iterated his May 7 offer. Despite MTA's repeated and continued reductions in its offers to Coastal, Centers replied by e-mail on June 21, presenting a counter-offer that lowered Coastal's requested compensation to, at least attempting to close the gap between the parties, something MTA has continually refused to do. Babbitt e-mail on June 22 stating that the parties were at an impasse, and that MTA would not be making a counter-offer and was no longer interested in negotiating.

V. COUNT I

Under the Communications Act and the Commission's Rules, an MVPD is required to negotiate retransmission consent in good faith with television broadcast stations.¹ As demonstrated above, both MTA and Coastal are Negotiating Entities under the Commission's Rules. The Commission's Rules set forth a series of practices that are considered *per se* violations of the requirement to negotiate in good faith.² Section 76.65(b)(1)(iii) of the Commission's Rules prohibits a Negotiating Entity from "acting in a manner that unreasonably delays retransmission consent negotiations." MTA's behavior here is a textbook example of just this prohibited behavior. For more than three months, MTA refused to provide a counter-offer to Coastal or to accept that Coastal has essentially agreed to its previous counter-offer. When MTA has designed to respond to Coastal with specific counter-offers, they have continually presented counter-offers proposing even

¹ 47 U.S.C. § 325(b)(3)(C)(ii); 47 C.F.R. § 76.65.

² 47 C.F.R. § 76.65(b)(1).

lower fees than their previous offers. In other words, MTA has continually either refused to respond, or made offers that move the parties further apart, tactics that are clearly designed to delay the resolution of negotiations. For these reasons, the Commission should conclude that MTA has failed to negotiate in good faith by unreasonably delaying negotiations, in violation of the Communications Act and the Commission's Rules.³

VI. COUNT II

Section 76.65(b)(1)(v) requires any Negotiating Entity that rejects the other party's proposal to provide the reasons for such rejection. As demonstrated above, MTA refused for more than three months to even provide a counter-offer to Coastal's outstanding offer. When it eventually did respond, it had reduced its counter-offer with no more explanation than that it believed its customers were opposed to price increases. When Coastal replied with its own counter-offer, MTA simply declared that it would no longer negotiate. MTA has failed its duty to respond to proposals from the other party, including the reasons for the rejection of such proposal. MTA has further failed to explain why it is unwilling to negotiate further.

VII. COUNT III – TOTALITY OF THE CIRCUMSTANCES

In addition to the list of actions constituting *per se* violations of the duty to negotiate in good faith, Section 76.65(b)(2) establishes a "totality of the circumstances" test, pursuant to which actions that may not constitute a violation of one of the *per se* standards may still demonstrate a failure to negotiate in good faith. As demonstrated above, MTA has clearly violated the *per se* standards prohibiting Negotiating Entities from unreasonably delaying negotiations and responding to the other party's proposals, including the reasons for rejection of those proposals. In the event that the Commission somehow is unable to find that MTA has committed a *per se* violation of the

³ 47 U.S.C. § 325(b)(3)(C)(ii), 47 C.F.R. § 76.65. Coastal notes that MTA's behavior may also constitute a violation of Section 76.65(b)(1)(i)'s prohibition on a Negotiating Entity's refusal to negotiate.

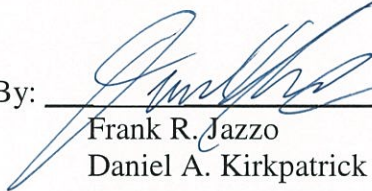
good faith negotiation requirements, however, MTA's continued refusal to negotiate for terms, and its repeated attempts to in fact move the parties even farther from an agreement, must be found to constitute a violation of the good faith negotiation requirements under the totality of the circumstances test.

VIII. REQUEST FOR RELIEF

Coastal respectfully requests that the Commission order MTA to negotiate in good faith for the carriage of the broadcast signal of KTBY on MTA's cable systems in the Anchorage DMA. Coastal further requests that the Commission impose, pursuant to Section 1.80 of the Commission's Rules, any forfeitures as the Commission deems appropriate, and grant such other and further relief as it deems just and proper.

Respectfully submitted,

Coastal Television Broadcasting Company LLC

By: 
Frank R. Jazzo
Daniel A. Kirkpatrick

Its Counsel

FLETCHER, HEALD & HILDRETH, PLC
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June 29, 2018

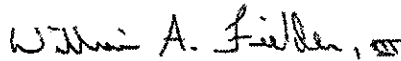
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DECLARATION OF WILLIAM A. FIELDER, III

1. My name is William A. Fielder, III. I am Chief Executive Officer of Coastal Television Broadcasting Company LLC.
2. I have reviewed the foregoing Good Faith Negotiation Complaint and all factual matters set forth therein are true to the best of my knowledge and belief. To the best of my knowledge, information, and belief formed after reasonable inquiry, the foregoing Good Faith Negotiation Complaint is well grounded in fact; warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and is not interposed for any improper purpose.



William A. Fielder, III
Chief Executive Officer
Coastal Television Broadcasting Company LLC

Date: June 29, 2018

CERTIFICATE OF SERVICE

I, Daniel Kirkpatrick, hereby certify that on this 29th day of June, 2018, I caused a copy of the foregoing "Retransmission Complaint" to be served via U.S. mail, postage prepaid, upon the following:

MTA Communications, LLC
1740 S. Chugach St.
Palmer, AK 99645

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be "Daniel Kirkpatrick".